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STANDARD FORM NO. 64

Approved For Release 2002/01/23 : CIA-RDP78-05538A000100060024-9

OGC Has Reviewed

Office Memorandum • UNITED STATES GOVERNMENT

TO : Comptroller

DATE: 9 April 1952

FROM : Office of General Counsel

~~CONFIDENTIAL~~

SUBJECT: Separation Allowance - [REDACTED]

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1. You requested this Office to look at the legal and equitable aspects of allowing [REDACTED] relief from the repayment of a separation allowance paid to him in the amount of \$336.63. After investigation and discussion with your office, it was orally requested that this memorandum embodying our views be furnished.

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2. The undisputed facts appear that [REDACTED] was authorized a separation allowance which was paid from 16 May 1951 to 18 September 1951 in the amount of \$336.63. It is agreed that the approval for the allowance was in error since the law [REDACTED] clearly do not authorize such an allowance on account of a dependent mother. [REDACTED] asserts that the appropriate officials approved the allowance and that repayment at this time would render it virtually impossible for him to meet basic living expenses utilizing all pay and allowances. The Foreign Division and the Finance Division recommended that the collection be waived in view of the hardship involved to the individual.

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3. The point of law is well-established that the Federal Government may not be bound by erroneous payments made under either a mistake of law or a mistake of fact and that repayment is normally required by the individual. (31 Comp. Gen. 177, 15 November 1951.) As a matter of law, therefore, it is clear that [REDACTED] has received moneys to which he is not entitled and, consequently, is under an obligation to repay those sums. A waiving of this obligation by the Agency would in legal effect amount to a gratuity to the individual.

4. There appears to be some misunderstanding within the Agency with regard to the principle of law set forth above. The misunderstanding seems to arise from the confusion between the approving channels and whether the authorized approving officials have, in fact, made errors of law or fact in exercising their authority. Mere approval by such officials is not sufficient to give the recipient of the funds a vested right in the moneys so received if the moneys were erroneously authorized and paid. This is a fundamental principle in Government, and no authorities are granted to the Agency excepting it from the operation of this principle. While it is true we have been granted broad and unusual powers by the Congress, such powers were granted for the peculiar functions of the Agency. In this respect the Comptroller General stated in a recent decision barring this Agency from granting retroactive pay increases that:

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SECURITY INFORMATION

"I feel certain it was not contemplated by the sponsors of the bill or by the Congress that this broad authority would be resorted to, or that it even contemplated a disregard of any control with respect to the normal administrative or operating problems which confront the ordinary Government agency."
(Comp. Gen. B-106516, 21 November 1951.)

5. At the present time there are no [REDACTED] within the Agency which clearly point out the obligations of individuals to repay moneys erroneously received by them, nor are the obligations of the authorizing officials explicitly set forth where they erroneously authorize a payment. It is true that the Confidential Funds Regulations, at paragraph 1.4, contain a reference to personal liability but this is aimed more at improper or even fraudulent payments rather than payments made in error. Therefore, you may wish to consider the appropriateness of a clear-cut notice or regulation on the subject to avoid repetition of the principles involved with regard to future cases of a similar nature. 25X1A 25X1A9a

6. We have examined the attachments to your proposed staff study and the personnel file of [REDACTED] with a view to ascertaining any extenuating circumstances bearing on the equitable aspects. The attachments furnish no enlightenment on the alleged hardship other than the unsupported statement by [REDACTED] that it would be virtually impossible to meet living expenses while repaying the \$336.63. 25X1A9a

7. The personnel file shows that at the time the separation allowance was authorized, [REDACTED] was a GS-4 with an annual salary of \$2875.00, and he received a 10% post differential, bringing his annual compensation to \$3162.50. On 30 September 1951 he was promoted to a GS-5, and effective 24 October 1951, his annual salary was adjusted to \$3410.00 with the 10% post differential bringing his annual compensation to \$3751.00. Effective 20 January 1952, [REDACTED] was promoted to GS-7 with a salary of \$4205.00, which with the 10% post differential made an annual compensation of \$4625.50. Quarters were furnished during the entire period at no expense to Mr. [REDACTED]. In a period of four months it can be seen that his annual compensation has increased in the gross amount of \$1463.00. While it is true that it can be presumed [REDACTED] has earned these promotions, the increase in compensation is pertinent with respect to his statement that he would be unable to meet living expenses. The facts presently available would, therefore, tend to disprove the unsupported statements of hardship. 25X1A9a 25X1A9a 25X1A9a

Enclosure: Original memo of 10 March 1952 to DD/A from Comptroller OGC/JSW:aia

Distribution:

[REDACTED] The Assistant General Counsel

Orig. - Addressee

1 - Finance Division

1 - Personnel Division (Covert)

4 - OGC

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